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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/850,149
Filing Date: May 08, 2001
Appellant(s): RAU, CLIFTON A.

Steven M. duBois
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/27/2006 appealing from the Office action mailed 7/26/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The appellant's statement of the grounds of rejection to be reviewed on appeal is not correct for the following reasons. The original specification did include page numbers. The correct listing of page numbers does not include the cover sheet. Thus, reference in the Brief to page 7 of the specification, for example, should actually refer to page 6, and so on. Furthermore, references to page 6, lines 11-12 and page 9, lines 11-13 are incorrect, whether or not this actually refers to pages 5 or 6 (in the first case) and pages 8 or 9 (in the second case) because only sentences fragments are indicated; thus the reference does not appear to make sense. Finally, it is noted that page 1 of the Brief states, in relevant part, "... references herein to pages of the as-filed application begin with ...". However, lines 25-29 of page 9 of the originally filed specification were amended as per the "preliminary" amendment of 10/18/2001. However, the dates of the software, listed in the amendment, were created after Appellants' filing date. Appellants were notified (3/31/2006) that this constituted new matter, with respect to the filing date

of 5/8/2001. Appellants have provided no clarification. However, this Brief is compliant because Appellants do not rely upon this section in their summary of the invention.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-11, 13-15, 18-20 rejected under 35 U.S.C. 102(e) as being clearly anticipated by Tanner et al.. For the convenience of the board, the relevant sections of the art are placed next to the limitations. No new grounds of rejection are applied. Appellants have only argued the independent claims (see pages 7-8 of the Brief).

Tanner et al. discloses :

1. A software program stored on a computer-readable medium for monitoring and controlling a model railroad, said software program operable to perform the steps of: displaying a representation of said model railroad layout on a display (see col. 15, lines 21-50 and fig. 15-19). In this context, note col. 9, line 40 to col. 10, line 19; col. 13, lines 24-35 and fig. 10-11); wherein a first portion of said model railroad layout is displayed using a first visual characteristic and a second portion of said model railroad is displayed using a second visual

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characteristic, wherein said first portion is selected to allow train movement thereon, and wherein said second portion is deselected to prevent train movement thereon; and editing said representation of said model railroad layout (see col. 15, lines 21-50 and fig. 15-19). In this context, note col. 9, line 40 to col. 10, line 19; col. 13, lines 24-35 and fig. 10-11).

11. An interface unit operable to translate a command received from a computer into a motor control command for controlling at least one element within a model railroad system, said interface comprising: a plurality of addressable units for receiving address information and data information within said command, wherein one of said plurality of addressable units that corresponds to said address information within said command translates said data information into said motor control command and outputs said motor control command, wherein said plurality of addressable units includes a set of decoders and a plurality of addressable registers, and wherein said command includes three address bits, four group bits and one data bit (See col. 5, lines 40-53; col. 10, lines 20-51; col. 11, lines 23-54; col. 14, lines 16-58 (four bit addressing scheme). See fig. 4A, 11, 12 in this regard).

20. A model railroad system, comprising:

a graphical user interface displaying a representation of said model railroad layout on a display; wherein a first portion

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of said model railroad layout is displayed using a first visual characteristic and a second portion of said model railroad is displayed using a second visual characteristic, wherein said first portion is selected to allow train movement thereon, and wherein said second portion is deselected to prevent train movement thereon (see col. 15, lines 21-50 and fig. 15-19). In this context, note col. 9, line 40 to col. 10, line 19; col. 13, lines 24-35 and fig. 10-11); and

said graphical user interface including an editing function that selectively permits a user to, rotate, move, delete and join a track portion based on a type of track portion which is selected (see col. 15, lines 21-50 and fig. 15-19). In this context, note col. 9, line 40 to col. 10, line 19; col. 13, lines 24-35 and fig. 10-11); and

an interface unit operable to translate a command received from a computer into a motor control command for controlling at least one element within a model railroad system, said unit comprising:

a plurality of addressable units for receiving address information and data information within said command, wherein one of said plurality of addressable units that corresponds to said address information within said command translates said data information into said motor control command and outputs said motor control command, wherein said plurality of addressable units includes a set of decoders and a plurality of addressable

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registers, and wherein said command includes three address bits, four group bits and one data bit (See col. 5, lines 40-53; col. 10, lines 20-51; col. 11, lines 23-54; col. 14, lines 16-58 (four bit addressing scheme). See fig. 4A, 11, 12 in this regard.)

(10) Response to Argument

Appellants arguments ^{are} regarding the fundamentals of the rejections are on pages 7-8 of the Brief. Here Appellants only argue limitations A-C of claim 20. The teaching of Tanner is first summarized, followed by rebuttal of Appellants' arguments.

Tanner et al. disclose an apparatus and method for controlling electrical devices such as electric trains using a computer. The invention utilizes standard ports that appear on most computers, and works with standard well-known widely commercially available train sets. The invention has customized software and circuitry for managing the speed and direction of one or more motors, and also for controlling the configuration of track turnouts. The invention can also be configured and updated by the user to fit the characteristics of a user's specific layout. In particular, Tanner et al. disclose monitoring via a GUI (fig. 3, 10, 13-19, and corresponding text), controlling (fig. 1-2, 5, 11, 14-17, and corresponding text), the electronics of (fig. 4-7, 9, 11-12, and corresponding text) and editing the configuration of via a GUI (fig. 3, 10, 13-19, and corresponding text) a model railroad and train system.

Tanner et al. disclose using two different visual displays to display operable and inoperable portions of the track (see col. 15, lines 21-50 and fig. 15-19). In this context, note col. 9, line 40 to col. 10, line 19; col. 13, lines 24-35 and fig. 10-11.

Tanner et al. disclose the limitations directed at bytes and bits. See col. 5, lines 40-53; col. 10, lines 20-51; col. 11, lines 23-54; col. 14, lines 16-58 (four bit addressing scheme). See fig. 4A, 11, 12 in this regard.

Appellants argue (last full paragraph, page 7 to top half of page 8 of the Brief) that Tanner et al. does not provide the "... claimed visual characteristics which quickly inform the user which portions of the layout are active/inactive." Appellants' argument is not persuasive. See Tanner at col. 15, lines 21-37, which recites:

"FIG. 15 shows how the software 58 allows, for convenience, a user to modify either an entire profile, a profile of the solenoid motors 42 only, or a profile of the cab motors 16 only. FIG. 16 shows how the software 58 can enable/disable certain sections of a layout within a selection box chosen by the user. This can be useful for electrically disabling certain portions of the layout so that repairs can be made, for example, while not interfering with the operation of the non-specified portions of the layout. FIG. 17 shows the potential of a "zoom" feature,

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which could be useful in managing layout configurations which are too large or detailed to be displayed within one screen panel only. As shown in FIG. 18, software 58 allows the user to select an area of the layout either to be **enabled, disabled,** or "zoomed". FIG. 19 then shows an example of how the software 58 would then display the "zoomed" area selected by the user."

Appellants even admit (last paragraph, page 7 of Brief), that:

"For example, with respect to claim element a), the cited sections of Tanner ... describe software that can enable/disable certain sections of a layout, and that a pair of polarity buttons can be used to visually control the direction of travel of the turnout."

Appellants then argue that the polarity buttons do not provide the claimed visual characteristic. Note col. 13, lines 24-35 of Tanner:

"As stated, the simple black line in FIGS. 3, 10, and 14 could also be replaced with a substantially more detailed representation of the train layout, potentially including accessories and/or other types of landmarks. *In light of the potential complexity of multiple cabs navigating multiple sections of track, some users may find a color-coded screen*

interface easier to understand and use. As stated, the commonly available visual compilers meant to be used with the present invention allow for a variety of image backgrounds within user menus and would not have difficulty in supporting such a color-coded arrangement. A browser type of arrangement could also be employed for the user interface."

Since the main element on the screen is the layout, it stands to reason that the layout is color coded. However, if there are any doubts to this, consider claim 20 of Tanner (not used in the rejection; however, it clearly indicates the meaning of the specification's disclosure). The claim refers to color coded visual layout arrangement.

However, assuming Appellants position, for the sake of argument, Appellants' claim only requires that the layout be displayed using a visual characteristic. The visual characteristics associated with elements 38 A and 38 B of fig. 10, for example, are color coded visual characteristics displayed with the layout. Appellants have not explained the patentable distinction between their argued feature and that taught in Tanner.

If the prior art structure is capable of performing the intended use, then it meets the claim. Tanner discloses identifying tracks using visual color characteristics.

With respect to limitation B, Appellants appear to argue (middle of page 8 of the Brief) that Tanner does not carry out the editing functions with respect to type of track. The Examiner would point out that any track in a model train set typically has at least two types of tracks, namely straight sections and curved sections – otherwise the user either has a single linear piece of track (without a curved section it is impossible to have

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the track take on any other topology) or a circle (an oval is not possible with a piece of straight track). See Tanner fig. 8A, 8B regarding prior art teaching of turnouts.

In any event, Tanner discloses the use of straight track, curved track as well as "turnouts". See, for example, Tanner at fig. 5, 11, 13 (which shows all three) for example. Tanner discloses (col. 15, lines 12-20):

"After installation, during the operation of the software 58, a panel representing all of the cabs 16 and the turnout solenoids 42 is displayed, as shown in FIG. 13. FIG. 13 shows a more complicated layout, with several separate track (cab) sections and also several turnout solenoids 42. Each turnout 42 solenoid is represented by a separate radio button. *Each section of track (cab)* is represented by a separate slider control, with radio buttons signifying direction."

The turnout solenoids are used to move the turnouts.

With respect to limitation C, Appellants only argument is in the last paragraph of page 8 of the Brief, where Appellants state,

"...while the cited sections of Tanner ... do describe using an 8-bit solenoid address and a 4 bit-addressing scheme, this is not identical to Appellant's claim element c) wherein the command includes three address bits, four group bits and one data bit."

Respectfully, the Examiner agrees that they are "different", but fails to see the patentable distinction. The recited features are a subset of that disclosed in Tanner, in

that they are capable of less. Three bits allows for six possible commands. The four bits of Tanner allows for the possible use of 16 commands.

Furthermore, this goes to intended use. If the prior art structure is capable of performing the intended use, then it meets the claim. The Tanner disclosure is capable of performing the intended use. The claimed invention would work just as well with the addressing scheme of Tanner, and have more capability.

It is also noted that the claim recites "*includes* three address...". That is to say, that it can be three or more, such as *four*.

Appellants' arguments (page 9, Brief) with respect to claims 1 and 11 (broader versions of claim 20) merely refer to earlier argued claims. Those arguments were also addressed in this Answer.

With respect to Appellants remarks, on pages 9-10 regarding dependent claims, it is noted that Appellants merely recite the claim limitations. For example, the argument about "green" and "red" (top of page 10 of the Brief), is respectfully, not persuasive. Appellants have not explained why the use of "red" and "green" is thought to be a patentable feature in this context. "Red" is known to represent *stop* and "green" is known to represent *go*.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


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Respectfully submitted,

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